S.B. Cr. Bail Application No. 5777/2007
(Rakesh Vs. State of Rajasthan)

Date of order : 29.11.2007

HON'BLE MR.H.R.PANWAR,J.

Mr. Kulwant Singh for the petitioner.
Mr. Ashok Upadhyay, P.P.
Mr. M.K.Garg for the complainant.

Heard learned counsel for the petitioner and public prosecutor for the State as also counsel appearing for the complainant. Perused the order impugned and challan papers.

It is contended by learned counsel for the petitioner that the deceased suffered 95% burn injuries and therefore, she was not in a fit state to make statement to the Magistrate who recorded the dying declaration. It is further contended that the dying declaration recorded by the Magistrate cannot be a gospel truth of the version given by the deceased. Learned counsel has relied on a decision of Hon'ble Supreme Court in Nallapati Sivaiah Vs. Sub-Divisional Officer, Guntur, A.P. 2007 SAR (Criminal) 941 SC. It was further contended that at the time of occurrence the petitioner Rakesh who is husband of the deceased was at the fair price shop distributing the wheat in the same village as has been stated by some of the prosecution witnesses and lastly it was contended that two persons Kirtaram and Raameti Devi who are father-in-law and mother-in-law have been granted bail.

Learned public prosecutor and the counsel appearing for the complainant opposed the bail application.

I have carefully gone through the entire challan

papers. The deceased made a Parcha Bayan alleging therein that when she came after taking bath, Kerosene oil was poured over her by "Bua Sas" and "Nanads", however, she was immediately taken to hospital and Additional Chief Judicial Magistrate, Hanumangarh was called for recording dying declaration. He recorded the dying declaration after the certificate having been issued by duty doctor Dr.Jeti Saini. The dying declaration has been recorded in question and answer form. A very specific question was put to the deceased as to what has happened to her and she stated that her husband Rakesh, Bua Sas and Nanads have burnt her. A further question was put as to how it has happened, then she stated that when she went to take bath, at that time, all these persons, poured the Kerosene oil over her. A question was also put to her as to whether she was subjected to cruelty in connection with demand of dowry and she stated that she was subjected to cruelty in connection with demand of dowry, more particularly, they demanded the Car. The marriage of the deceased was solemnized with the petitioner on 19.2.2007 and the date of occurrence is 16.6.2007 almost four months after the marriage at the in-law's house. The death of the deceased is other than in normal circumstances as she suffered the burn injuries.

Keeping in view the provisions of Section 113-B of the Evidence Act and dying declaration recorded by Judicial Magistrate soon after the occurrence, in my view, the decision relied on by learned counsel for the petitioner turns on its own facts and at this stage is of no help to the petitioner. So far as granting bail to Kirtaram and Raameti Devi who are father-in-law and mother-in-law is concerned, the deceased has not levelled any allegation against these two persons in the dying declaration recorded by the Judicial Magistrate. The specific allegation in the dying declaration is against the husband Rakesh, Bua Sas and

Nanads. In the circumstances, therefore, in my view, it is not a fit case to release the petitioner on bail. The bail application filed by the petitioner under Section 439 Cr.P.C. is therefore, dismissed.

(H.R.PANWAR), J.

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